IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

Writ Petition No 437 of 2005

M/s Sushil Constructions.petitioners
vs
The Managing Director
Mah State Road Development and ors...Respondents

Mr Gauri Jadhav for petitioners
Mr.R M Sawant GP for respondent State
Ms S V Tambe for respondent no. 3

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 29.6.2005

P.C:

. The petitioners have filed this petition seeking enforcement of the contract between the petitioners and the Maharashtra State Road Development Corporation, MSRDC for collection of toll at Toll Stations on Latur Barshi Road and Latur Abejogai Road for a period of 52 weeks i.e.upto 6.3.2006. In the alternative the petitioners have claimed damages in respect of expenses incurred by them in respect of the said contract.

2. The tenders were invited by public notice dated 30.9.2004 for the aforesaid two toll stations for the period of 52 weeks upto 6.3.2006. The petitioenrs were the highest bidders for Rs.29l lacs and they deposited the entire amount on

l6.ll.2004 and 7.l2.2004. It appears that in the meantime there was a move by the State Government to shift the said toll stations and a meeting was convened to discuss the said issue of collection of toll at two toll stations.In that meeting a decision was taken to change the location of toll stations to outskirts of the city to a position near the flyover on the said road and the contract in favour of the petitioners has been cancelled and the amount has been refunded by the MSRDC to the petitioners.

3. The MSRDC has already notified the change of location of the toll stations and fresh tender has been issued for the new location. Mr Sawant. the learned counsel appearing for MSRDC stated that the work of allotment of contract for the new toll stations will be completed within 8 weeks i.e. by the end of September 2005 and in the meantime the existing contractor is allowed to collect the toll pending the finalisation of tender for the new location. In the light of the subsequent developments it is not possible to grant the prayer of the petitioenrs for implementation of the contract. If the petitioners submit tneder in respect of new location such tender shall be considered on its own merits without in any manner

influenced by the litigation and without prejudice to the right of the petitioner to recover the expenses incurred by them in respect of the old location.

4. The claim for damages cannot be decided in writ jurisdiction under Article 226 of the Constitution. The petitioners will have to adopt appropriate remedy for the same in accordance with law. It is the case of the petitioners that the contract contains an arbitration clause. This is disputed by the respnodents. The petitioners are free to adopt their remedy under the Arbitration Act, if they are so advised.

5. Petition stands disposed of.